

REMARKS

A Petition for a Three-Month Extension of Time thereby extending the time for responding to the Final Office Action from June 1, 2007 to and including September 1, 2007 is submitted herewith.

A Request for Continued Examination (RCE) is also submitted herewith.

The present Amendment is in response to the Office Action mailed March 1, 2007. Claims 1-10 were rejected in the Action. Claims 1, 6, and 10 have been amended. Claim 7 has been canceled. Claims 11-15 have been added. Therefore, claims 1-15 are currently pending in the present application. Support for new independent claim 11 and its dependent claims can be found in Applicants' originally filed disclosure. As such, no new matter has been added. Applicants set forth remarks relating to the Official Action below.

In the Action, the Examiner rejected claims 1-10 under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 6,113,637 to Gill et al. ("*Gill*"). The Examiner contends that *Gill* discloses all of the limitations included within claims 1-10. Specifically, the Examiner asserts that Fig. 5 of *Gill* shows a lower baseplate including a perimetrical region separated by a spacing with the perimetrical region having a pair of opposing (since they lie along the same plane) recesses 58 that define an access volume. Although Applicants disagree with the Examiner's assertions relating to *Gill*, they have submitted Amendments of the claims in order to further clarify the invention.

Applicants respectfully assert that amended independent claims 1 and 6 and new independent claim 11 are unanticipated by *Gill* because the cited reference neither teaches nor suggests a spinal orthopedic device and tool set including "an intervertebral spacer device having first and

second baseplates . . ., the first baseplate having a top surface and an opposed bottom surface, the bottom surface of the first baseplate having a perimetrical region including a plurality of recesses formed therein, the second baseplate having a top surface and an opposed bottom surface, the top surface of the second baseplate having a perimetrical region including a plurality of recesses formed therein", the perimetrical regions of the baseplates separated by a spacing having a width. Certain of these limitations are clearly not taught by *Gill*.

Firstly, each of the first and second baseplates of the present invention includes a perimetrical region. This is different from *Gill* in that the element of *Gill* the Examiner utilizes as a perimetrical region is actually a flange, which is far different from that clearly discussed and shown as a perimetrical region in the present application. Secondly, the perimetrical region of each of the first and second baseplates include recesses which oppose one another and are separated by a spacing having a width. In contrast, the Examiner only utilized one baseplate of *Gill*, either the first or the second baseplate, to meet these limitations. The Examiner cannot use both first and second baseplates in *Gill* because as asserted by the Examiner recesses 58 "lie along the same plane." The plane being that of a singular baseplate. This is different than the opposed perimetrical regions of the opposed baseplates of the present invention.

Additionally, the Examiner cannot use 'additional recesses 40 (Fig. 2), 62 (Fig. 6)' in *Gill* to anticipate currently pending claims 1-11. Amended independent claims 1 and 6 and new independent claim 11 include the limitation that the first and second baseplates include a top surface and an opposed bottom surface, the bottom surface of the first baseplate having

a perimetrical region including a plurality of recesses formed therein. As clearly shown in *Gill*, recesses 40 and 62 are not formed in a bottom surface, but rather are formed in a side surface of a respective baseplate. The Examiner cannot assert that recesses 40 and 62 are located on a bottom surface in *Gill* because these surfaces if considered "a bottom surface" do not have an opposed top surface as recited in the pending claims. The location of indentation 40, for example, is only referred to in *Gill* as the location "at the base of flange 34, where flange 34 meets substantially flat vertebrae engaging surface 32. See col.5, ll.41-45. Further evidence in *Gill* that indentations 40 and 62 are located in a side surface of their respective baseplates is provided by "prosthesis-engaging portion 76 also includes a pair of clips 82 on *both sides* of prosthesis-engaging portion 76. Clips 82 are designed to hold the embodiments of ball component 22 and trough component 24 that include indentations 40 and 62, respectively (emphasis added). See col.7, ll.32-36. This portion of the disclosure indicates that the clips 82 having clip fingers 84 on *both sides* of prosthesis-engaging portion 76 of insertion tool 70 and are designed to engage indentations 40 and 62 located on the side surfaces of the respective first and second baseplates. Finally, Applicants point out that the present invention and that taught by *Gill* operates in very different fashions.

For the foregoing reasons, *Gill* cannot be used to anticipate amended claims 1 and 6 and new independent claim 11. Claims 2-5, 8-10 and 12-15, some of which have been amended for clarity purposes, are unanticipated, *inter alia*, by virtue of their dependence from the independent claims. A dependent claim is necessarily narrower than an independent claim from which it properly depends.

In view of the above, each of the presently pending

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claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' agent at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: August 31, 2007

Respectfully submitted,

By



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